

MORRISON FOERSTER

707 WILSHIRE BOULEVARD
SUITE 6000
LOS ANGELES
CALIFORNIA 90017-3543

TELEPHONE: 213.892.5200
FACSIMILE: 213.892.5454

WWW.MOFO.COM

MORRISON & FOERSTER LLP
AUSTIN, BEIJING, BERLIN, BOSTON,
BRUSSELS, DENVER, HONG KONG,
LONDON, LOS ANGELES, MIAMI,
NEW YORK, PALO ALTO, SAN DIEGO,
SAN FRANCISCO, SHANGHAI, SINGAPORE,
TOKYO, WASHINGTON, D.C.

October 26, 2023

Writer's Direct Contact
+1 (213) 892-5648
MMarciszewski@mofo.com

VIA ECF

The Honorable Dale E. Ho
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
40 Foley Square
New York, NY 10007

The Honorable Valerie Figueredo
United States Magistrate Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: International Code Council, Inc. v. UpCodes, Inc. et al. – Consolidated Case
Nos. 1:17-cv-6261 and 1:22-cv-10815

Dear District Judge Ho and Magistrate Judge Figueredo:

The parties submit this joint letter motion concerning the discovery schedule in the consolidated case No. 1:17-cv-6261. The parties jointly move to reset the scheduling order in the consolidated cases for good cause to allow time for the parties to continue to conduct discovery on the false advertising claims in addition to the Second Copyright Case. The parties include below a proposed amended case schedule.

The parties have requested to reset the scheduling order two times previously, on March 22, 2021, and July 24, 2023, respectively. (ECF Nos. 115, 180). The Court granted each of the parties' motions on March 22, 2021, and July 26, 2023, respectively. (ECF Nos. 116, 181).

As shown in more detail in the chart below, ICC has served a total of 113 document requests, the latest on June 16, 2023, and UpCodes has served responses to all of those requests as of July 24, 2023. ICC has served a total of 13 interrogatories, the latest on February 17, 2023, and UpCodes has served responses to all of those interrogatories as of March 20, 2023.

Propounding Party's Request	Date of Requests	Number of Requests	Responding Party	Date of Response
ICC 1 st Set of RFPs (False Advertising)	October 21, 2022	41	UpCodes	November 21, 2022

MORRISON FOERSTER

The Honorable Dale E. Ho
The Honorable Valerie Figueredo
October 26, 2023
Page Two

ICC 1 st Set of RFPs (Second Copyright Case)	February 17, 2023	43	UpCodes	March 20, 2023
ICC 1 st Set of Interrogatories (False Advertising)	October 21, 2022	4	UpCodes	November 21, 2022
ICC 1 st Set of Interrogatories (Second Copyright Case)	February 17, 2023	9	UpCodes	March 20, 2023
ICC 2 nd Set of RFPs (Second Copyright Case)	June 16, 2023	29	UpCodes	July 24, 2023

As shown in more detail in the chart below, UpCodes has served a total of 60 document requests, the latest on September 5, 2023, and ICC has served responses to all of those requests as of October 5, 2023. UpCodes has served a total of 12 interrogatories, and ICC has served responses to all of those interrogatories as of November 25, 2022.

Propounding Party's Request	Date of Requests	Number of Requests	Responding Party	Date of Response
UpCodes 1 st Set of RFPs (False Advertising)	October 26, 2022	28	ICC	November 25, 2022
UpCodes 1 st Set of RFPs (Second Copyright Case)	March 8, 2023	31	ICC	April 10, 2023

MORRISON FOERSTER

The Honorable Dale E. Ho
The Honorable Valerie Figueredo
October 26, 2023
Page Three

UpCodes 1 st Set of Interrogatories (False Advertising)	October 26, 2022	12	ICC	November 25, 2022
UpCodes 2 nd Set of RFPs (Second Copyright Case)	September 5, 2023	1	ICC	October 5, 2023

As shown in more detail in the chart below, UpCodes has produced a total of 68,478 pages of documents, with the latest production on October 26, 2023. ICC has produced a total of 159,120 pages of documents, with the latest production on June 16, 2023.

Producing Party	Date of Production	Number of Pages in Production
UpCodes	April 28, 2023	158
UpCodes	October 13, 2023	45,312
UpCodes	October 26, 2023	23,008
UPCODES TOTAL		68,478

Producing Party	Date of Production	Number of Pages in Production
ICC	May 26, 2023	1,161
ICC	June 16, 2023	157,959
ICC TOTAL		159,120

MORRISON FOERSTER

The Honorable Dale E. Ho
 The Honorable Valerie Figueredo
 October 26, 2023
 Page Four

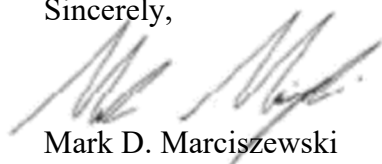
Furthermore, there has been extensive third-party discovery in the instant case. ICC served 36 third parties,¹ totaling a number of 766 requests for production of documents. UpCodes served 11 third parties, totaling a number of 95 requests for production of documents.

The parties have exchanged correspondence and have participated in numerous meet-and-confer videoconferences regarding each parties' discovery requests. Most recently, the parties have been negotiating the parameters of an appropriate ESI search for responding to each other's requests for production. Those negotiations concluded on October 13, 2023, and the parties are now reviewing the results of the agreed-upon searches. The parties expect to begin taking depositions this winter after those productions are complete.

The parties are not scheduled to appear before the Court until May 9, 2025, for the Final Pretrial Conference.

Accordingly, parties jointly move to reset the scheduling order in accordance with the proposed amended case schedule below for the consolidated cases for good cause to allow time for the parties to continue to conduct discovery.

Sincerely,



Mark D. Marciszewski

Event	Current Deadline	Proposed Deadline	Days Before Trial (for Pretrial Submissions)
Substantial Completion of Document Production in	October 31, 2023	January 19, 2024	

¹ UpCodes' counsel has been retained by 18 of the 36 third parties. To date, UpCodes' counsel, on behalf of third parties, has produced 789 documents in response to ICC's third-party requests. ICC's counsel, on behalf of third parties, has produced 16 in response to UpCodes' third-party requests.

MORRISON FOERSTER

The Honorable Dale E. Ho
The Honorable Valerie Figueredo
October 26, 2023
Page Five

Event	Current Deadline	Proposed Deadline	Days Before Trial (for Pretrial Submissions)
False Advertising Case and Second Copyright Case			
Close of Fact Discovery in False Advertising Case and Second Copyright Case	February 23, 2023	May 10, 2024	
Opening Expert Reports from Party Bearing Burden of Proof in False Advertising Case and Second Copyright Case	May 2, 2024	July 19, 2024	
Rebuttal Expert Reports in False Advertising Case and Second Copyright Case	June 20, 2024	September 6, 2024	
Close of Expert Discovery in False Advertising Case and Second Copyright Case	August 9, 2024	October 25, 2024	
Motions for Summary Judgment in False Advertising Case and Second Copyright Case	September 27, 2024	January 17, 2025	
Oppositions to Motions for Summary Judgment in False Advertising Case and Second Copyright Case	October 25, 2024	February 14, 2025	
Replies in Support of Motions Summary Judgment in False	November 8, 2024	February 28, 2025	

MORRISON FOERSTER

The Honorable Dale E. Ho
The Honorable Valerie Figueredo
October 26, 2023
Page Six

Event	Current Deadline	Proposed Deadline	Days Before Trial (for Pretrial Submissions)
Advertising Case and Second Copyright Case			
Parties to exchange * list of claims * contentions of fact * witness lists * exhibit lists * deposition designations * proposed jury instructions * proposed verdict forms	February 25, 2025 or 60 days after a decision on all dispositive motions, whichever is later ²	June 6, 2025 or 60 days after a decision on all dispositive motions, whichever is later ³	94 days before trial
Parties to exchange objections to * witness lists * exhibit lists * deposition designations * proposed jury instructions * proposed verdict form	March 7, 2025	June 20, 2025	80 days before trial
Parties to complete meet and confer regarding list of claims and contentions of fact, and objections to * witness list * exhibit list * deposition designations * proposed jury instructions	March 18, 2025	June 30, 2025	70 days before trial

² If after February 25, 2025, all subsequent dates will be pushed back to keep the same number of days before trial.

³ If after June 6, 2025, all subsequent dates will be pushed back to keep the same number of days before trial.

MORRISON FÖERSTER

The Honorable Dale E. Ho
The Honorable Valerie Figueredo
October 26, 2023
Page Seven

Event	Current Deadline	Proposed Deadline	Days Before Trial (for Pretrial Submissions)
* proposed verdict form			
Parties to Confer to Attempt to Agree on Stipulations of Fact and Admissibility	March 21, 2025	July 2, 2025	67 days before trial
Motions <i>in Limine</i>	March 28, 2025	July 9, 2025	61 days before trial
Joint Pretrial Order	April 18, 2025	July 30, 2025	40 days before trial
Each Party's Pretrial Memorandum with Brief Discussion of the Issues to Be Tried and Authorities Relied Upon	April 18, 2025	July 30, 2025	40 days before trial
Joint Proposed Voir Dire	April 18, 2025	July 30, 2025	40 days before trial
Joint Proposed Request to Charge	April 18, 2025	July 30, 2025	40 days before trial
Joint List of Individuals, Companies and Other Entities that May Appear as Witnesses or Otherwise Be Referred to During Trial	April 18, 2025	July 30, 2025	40 days before trial
Joint Proposed Verdict Form	April 18, 2025	July 30, 2025	40 days before trial

HARRISON FOERSTER

The Honorable Dale E. Ho
 The Honorable Valerie Figueredo
 October 26, 2023
 Page Eight

Event	Current Deadline	Proposed Deadline	Days Before Trial (for Pretrial Submissions)
Oppositions to Motions <i>in Limine</i>	April 18, 2025	July 30, 2025	40 days before trial
Reply Briefs on Motions <i>in Limine</i>	May 2, 2025	August 15, 2025	24 days before trial
Final Pretrial Conference	May 9, 2025	August 22, 2025	17 days before trial
Requests to Bring Computers into Courthouse	May 15, 2025	August 28, 2025	11 days before trial
Trial	May 27, 2025 (Estimated 20 days)	September 8, 2025 (Estimated 20 days)	